

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGO JOHNSON and U.S. POSTAL SERVICE,
WORTH POST OFFICE, Worth, IL

*Docket No. 99-393; Submitted on the Record;
Issued August 28, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has an emotional condition causally related to compensable factors of her employment.

On October 18, 1996 appellant, then a 35-year-old general clerk, filed a claim for an emotional condition. She stated that she had reported illegal activity at the employing establishment but contended that the other workers at the employing establishment covered up the activity which led to her becoming an outcast. Appellant also commented that poor scheduling by management and the constant need for her to fix errors caused her condition. In a February 13, 1997 letter, appellant stated that she reported timekeeping irregularities to a postal inspector and persisted in reporting the irregularities but nothing was done to correct the problem. She indicated that a postal carrier, who was married to the timekeeper, did not punch in regularly but was not disciplined. Appellant noted two other carriers who neglected to punch in on fewer occasions were instructed to use leave. She submitted a letter in which she informed a postal official that the carrier in question had tardy over 100 times in the prior 11 months. Appellant stated that she received relentless comments about her actions from her coworkers. She claimed that the postmaster had told another official that appellant had a vendetta against the timekeeper but denied making the statement when confronted.

Appellant also noted that she was required to meet daily deadlines involving the transmission of financial activity at the employing establishment which included checking all window transactions for accuracy. She indicated that she performed the nightly deposit, submitted weekly financial statements and filed accounting period reports every four weeks. Appellant also noted that once a week she had to cover four telephone lines when the timekeeper had the day off. She stated that she was not adequately equipped to perform her assigned duties because her replacement, Tara Williams, lacked the intelligence to perform the job. She indicated that at least once a week she had to return to work on unpaid overtime to finish work not completed by her replacement. She related that a review time from the employing establishment found that the office positions, including hers, were not eight-hour positions. She

indicated that on one occasion, when she refused to perform mandatory overtime because of child care arrangements she was found to be absent without leave and given a job discussion for failure to follow instructions. After filing a complaint, the employing establishment agreed to overlook the discussion but did not give a written instruction governing the use of mandatory overtime.

Appellant contended that her supervisor allowed her replacement, Ms. Williams, to read appellant's memorandum, which criticized Ms. Williams work. Appellant stated that this led to a verbal confrontation with Ms. Williams. She indicated that she walked away from the confrontation but claimed that her supervisor apparently wanted a physical altercation.

Appellant stated that she was not allowed to change her schedule as permitted under the rules of the employing establishment. She indicated that she was denied many promotional opportunities even though she had experience in most of the positions in an associate office of the employing establishment. Appellant contended that most of the promotions went to people whom were selected for the position before it was announced. She stated that she had difficulty in getting leave approved while other employees received preferential treatment.

Appellant stated that in October 1995 she was forced to cancel a detail she was on because the supervisor had begun to harass her. She was transferred to another supervisor but was still harassed by her former supervisor. Appellant indicated that when she decided to cancel the detail, a coworker informed her that the postmaster at the employing establishment was making telephone calls to keep appellant from returning to the employing establishment. Appellant stated that she, therefore, had no place to work stress free. Appellant's personal physician authorized 30 days of medical leave for situational stress. She noted that during that period and after she returned to work she had bouts of uncontrollable tears.

In a January 25, 1997 statement, an official at the employing establishment stated that postal inspectors investigated the time-keeping irregularities but nothing was found amiss. The official submitted a copy of the investigative report which noted that between January 1995 and April 1996 the timekeeper made manual entries on 183 days for her husband, 26 of which related to the time her husband began his shift. The inspectors indicated that all manual corrections had to be supported by a form signed by the supervisor but the forms were only retained for one accounting period. The inspectors stated that they found that the documents that were available did not show any irregularity. The inspectors reported that the employing establishment officials noted that the letter carrier in question often failed to punch in so the supervisor would authorize the timekeeper to enter a 6:30 a.m. start time for the letter carrier. The officials stated that they had documented the letter carrier's late arrivals and issued him two letters of warning.

The employing establishment official stated that appellant's complaints about poor scheduling were only her perception. The official indicated that at the time in question, the employing establishment's vacation schedule had been set and appellant's request for incidental leave could not be granted for the time she requested. She stated that appellant's detail was allowed even though it imposed a hardship on the employing establishment. The official commented that the detail was cancelled due to appellant's comments and actions to supervisors while on detail. She denied that any effort was made to cover up the alleged timekeeping fraud and noted that the employing establishment cooperated fully with the investigation. The official

commented that parts of appellant's job were probably stressful but no more than the duties of other employees. She stated that appellant did her job well but had occasional conflicts with management and coworkers. The official contended that appellant's stress was self-generated. She subsequently submitted other documents concerning appellant, including a memorandum that someone had put a sanitary pad on appellant's chair. The official also submitted a statement from a supervisor that he had not given appellant's memorandum to Ms. Williams. He reported that appellant had placed the memorandum on his desk and Ms. Williams had read it while it was on his desk.

In an October 2, 1997 decision, the Office denied appellant's claim for compensation on the grounds that the medical evidence of record did not establish that she was disabled due to accepted factors of employment. The Office found that the harassment alleged by appellant had not occurred, that she did not fix errors on a daily basis and that management did not expect more of her than of other employees. The Office concluded that several factors alleged by appellant were not considered to be factors of employment, including poor scheduling by management, fighting with management for time off, failure to be promoted, being sent home without receiving administrative leave, denial of sick leave after being considered absent without leave, her displeasure that the outcome of the investigation performed after her allegations, and the management finding that her position was not an eight-hour position. The Office accepted that the only compensable factors of employment were the verbal confrontation with Ms. Williams and the incident where a sanitary pad was left on her chair.

In an October 21, 1997 letter, appellant requested a hearing before an Office hearing representative, which was conducted on May 20, 1998. In an August 3, 1998 decision, the Office medical adviser affirmed the Office's October 2, 1997 decision.

The Board finds that appellant has not established that she was injured in the performance of duty.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.² In these cases, the

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S.*

feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.³

Appellant expressed frustration when postal inspectors found no evidence of improper actions or found that the employing establishment was aware of the problems and had taken what the employing establishment considered to be appropriate disciplinary action. The investigation and actions taken as a result of the investigation were not part of appellant's assigned duties. Her frustration over the result of the investigation begun by her report, therefore, is self-generated and not a compensable factor of her employment.

Appellant made a general allegation that her emotional condition was due to harassment by her supervisors. The actions of a supervisor which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.⁴ Appellant testified that two coworkers indicated that they would not talk around appellant because she would report them. She stated that after she wrote a letter to a congressman about the timekeeping irregularities, it appeared that everyone in the employing establishment knew she had written to the congressman and the timekeeper made comments in appellant's presence of writing to congressmen to make complaints. Appellant noted that, due to her schedule, she would be the last person in the employing establishment to clock in. She indicated that when she did so in front of other coworkers, there was utter silence. Appellant related that, after she had written in a letter that the timekeeper and her husband received special treatment, while others were punished, a supervisor stated, as she clocked in, "Well, I guess we'll be treating everybody, like crap, then." She claimed that when she needed help on a project or other necessary work, she would not get assistance unless she requested it directly in a memorandum. Appellant also discussed the verbal argument with Ms. Williams and the incident in which a sanitary pad was placed on her chair.

The Office found that appellant had not established that she was harassed as she alleged. Appellant, in her testimony, cited several examples of what she considered to be harassment. The Office accepted that two of the incidents happened as alleged, the verbal altercation and the placement of the sanitary pad.

Appellant also indicated that the performance of her duties were stressful. She noted her obligations to make daily, weekly and monthly reports, making the daily night deposit for the

Cordova, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁴ *Joan Juanita Greene*, 41 ECAB 760 (1990).

employing establishment and ensuring that transactions at the employing establishment's windows were accurate. Appellant also noted that she occasionally had to come in on uncompensated overtime to perform work that was not performed by her replacement. She commented that she often had to correct errors made by her replacement. Appellant's allegations on these matters are vague and general in nature, lacking any specificity on how these activities were stressful to her. She also did not give specific examples of dates she had to come to work on uncompensated overtime as she alleged or the number of occasions she had to correct errors by her replacement and the amount of effort and time needed to correct such alleged errors. Appellant therefore has not submitted sufficient detailed evidence to establish that these factors occurred as she alleged and did not describe in sufficient detail how these factors were stressful and contributed to her emotional condition.

Appellant complained that her requests for leave were denied inappropriately and that the schedule for the employing establishment was poorly planned. She commented that on October 18, 1996 the supervisor sent her home on the grounds that she was unstable but expected her to be at work the next day. Appellant claimed that she did not receive promotions for which she was qualified. These factors are administrative in nature and are not within appellant's assigned duties. Therefore, these factors would not be considered compensable factors of employment unless there was error or abuse in the administrative actions. There is no evidence in this case that the employing establishment's actions were in error or abusive.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Richard S. Abrams, a Board-certified psychiatrist, for an examination and opinion on whether appellant's condition was causally related to the accepted factors of her employment. In an August 17, 1997 report, Dr. Abrams diagnosed recurrent major depression with probable paranoid delusions. He commented that he did not know to what extent appellant's allegations of bad comments and behavior from other employees were true, but he stated that appellant most likely precipitated such behavior by her unconscious attitude towards them. Dr. Abrams concluded that appellant's psychiatric problems began during her childhood but were made worse by her 10 years of employment at the employing establishment. He indicated that there was no data to suggest that there were other factors in the prior four years that may have been causative of her condition. Dr. Abrams stated that appellant's job, therefore, was a proximate, partial cause of her psychopathology. He commented that this aggravation would be operative so long as she worked for the employing establishment, even at another site, because her perception of stress was associated with any site of the employing establishment and was fixed in her mind.

The Office requested clarification from Dr. Abrams, asking him whether the incidents of a sanitary napkin left on appellant's chair and the argument with a coworker over a memorandum written by appellant specifically caused her emotional condition. In a September 2, 1997 response, Dr. Abrams stated that he could never conclude that appellant's emotional state deteriorated only from these two incidents. He commented that appellant's emotional condition worsened over a period of years, partly because of her correct or incorrect perception of the adverse feelings of her coworkers. Dr. Abrams' reports therefore show that appellant's emotional condition was due, not to the accepted compensable factors of employment, but due to appellant's perception of how she was viewed by her coworkers. The

cause of her condition must therefore be viewed as self-generated and not arising out of factors of her employment

The decision of the Office of Workers' Compensation Programs dated August 3, 1998 is hereby affirmed.

Dated, Washington, D.C.
August 28, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member